VIKING RESOURCES CORP.

IBLA 80-159 Decided July 3, 1980

Appeal from decisions of the Montana State Office, Bureau of Land Management, rejecting oil and gas lease offers M 44913, M 44894, and M 44906.

Affirmed.

1. Oil and Gas Leases: Applications: Attorneys-in Fact or Agents -- Oil and Gas Leases: Applications: Drawings

   Where a corporation's statement of corporate qualifications on file in BLM shows that an individual identified only by name, but not by title or position, has a limited power to act on behalf of the corporation with reference to Federal oil and gas leases, simultaneous offers filed by him were properly rejected for the reason that they were not accompanied by the separate statements required when such offers are filed by an agent or attorney in fact, and this omission may not be "cured" post hoc by the corporation's allegation that he is its general manager and considered an officer.

2. Oil and Gas Leases: Applications: Drawings -- Oil and Gas Leases: First-Qualified Applicant

   A noncompetitive oil and gas lease may only be issued to the first qualified applicant. A first-drawn drawing entry card oil and gas lease offer signed by an agent but which is not accompanied by the statements required by regulation must be rejected because the offeror is not the first qualified applicant.

APPEARANCES: Kenneth A. Milliard, General Manager, Viking Resouces Corp. for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

The Viking Resources Corporation appeals from decisions dated Novembe 9, 1979, and November 20, 1979, from the Montana State Office, Bureau of Land Management (BLM), rejecting appellant's noncompetitive oil and gas offers (M 44913, M 44894, and M 44906) which received first priority for parcels MT 1143, MT 1124, and MT 1136 in drawings of simultaneously filed oil and gas lease offers. In each case appellant's drawing entry card wa first drawn for the parcel applied for. All of the offers were filed by Kenneth A. Milliard who acted pursuant to a power of attorney which was o file at the Colorado State Office of the BLM. Each offer referred to the appropriate file number, but was not accompanied by the statements requir under 43 CFR 3102.6-1, causing BLM to reject them.

Appellant contends in the statement of reasons for appeal that the signature which appeared on the lease offers was that of the General Manager of the Viking Resources Corporation. The appellant further contends that the general manager of a corporation is an officer of that corporation, and therefore not subject to the additional filing requirements outlined in 43 CFR 3102.6-1.

It is further asserted on behalf of appellant that by letter dated July 27, 1979, the corporate qualifications were amended to include Kenne A. Milliard, the appellant's general manager, giving him authority to sig entry cards for simultaneous oil and gas lease offer.

[1] When an attorney-in-fact or agent files an offer on behalf of a principal, Departmental regulation 43 CFR 3102-6-1 requires several statements to accompany the drawing entry card:

§ 3102.6-1 Statements.

> (a) Evidence required. (1) Except in the case where a member or a partner signs an offer on behalf of an association (as to which, see § 3102.3-1) or where an officer of a corporation signs an offer on behalf of the corporation (as to which, see § 3102.4-1) evidence of the authority of the attorney-in-fact or agent to sign the offer and lease [is required] if the offer is signed by such attorney or agent on behalf of the offeror. Where such evidence has previously been filed in the same proper office where the offer is filed, a reference to the serial number of the record in which it has been filed, together with a statement by the attorney-in-fact or agent that such authority, is still in effect will be accepted.

(2) If the offer is signed by an attorney in fact or agent, it shall be accompanied by separate statements over the signatures of the attorney-in-fact or agent and the offeror stating whether or not there is any agreement or understanding between them or with any other person, either oral or written, by which the attorney in fact or agent or such other person has received or is to receive any interest in the lease when issued, including royalty interest or interest in any operating agreement under the lease, giving full details of the agreement or understanding if it is a verbal one. The statement must be accompanied by a copy of any such written agreement or understanding. If such an agreement or understanding exists, the statement of the attorney-in-fact or agent should set forth the citizenship of the attorney-in-fact or agent or other person and whether his direct and indirect interests in oil and gas leases, applications, and offers including options for such leases or interests therein exceed 246,080 acres in any one State, of which no more than 200,00 acres may be held under option, or exceeds the permissible acreage in Alaska as set forth in § 3101.1-5. The statement by the principal (offeror) may be filed within 15 days after the filing of the offer. This requirement does not apply in cases in which the attorney in-fact or agent is a member of an unincorporated association (including a partnership), or is an officer of a corporation and has an interest in the offer or the lease to be issued solely by reason of the fact that he is a member of the association or a stockholder in the corporation.

(3) If the power of attorney specifically limits the authority of the attorney-in-fact to file offers to lease for the sole and exclusive benefit of the principal and not in behalf of any other person in whole or in part, and grants specific authority to the attorney-in-fact to execute all statements of interest and of holdings in behalf of the principal and to execute all other statements required, or which may be required, by the Acts and the regulations, and the principal agrees therein to be bound by such representatives [sic] of the attorney-in-fact and waives any and all defenses which may be available to the principal to contest, negate or disaffirm the actions of the attorney-in-fact under the power of attorney, then the requirement that statements must be executed by the offeror will be dispensed with and such statements executed by the attorney-in-fact will be acceptable as compliance with the provisions of the regulations. [Emphasis added.]

The issue in this case is not whether the title "general manager," without any further elucidation, must be recognized by BLM as describing its holder as an "officer of a corporation" within the context of the regulation. Rather, the issue is whether the statement of corporate qualifications filed by Viking Resources Corporation with BLM and augment by its subsequent letter describing Milliard's authority to act on behalf of the corporation was sufficient to identify Milliard as a corporate officer rather than its agent or attorney-in-fact.

The statement of corporate qualifications originally filed with BLM did not mention Millard, nor did it make any mention of including a "general manager" among its officers. The instrument which amended the statement of corporate qualifications to establish Milliard's authority t act on its behalf was a letter, the entire text of which is as follows:

> This letter will serve to give Kenneth A. Milliard authority to act on behalf of Viking Resources Corporation in all matters relating to Federal Oil and Gas Leases, to include but not limited to, the signing of simultaneous filing cards, accepting assignments of Federal oil and gas leases and signing for open filings.

Again, there is no reference to him being "general manager," nor is there any indication that appellant has anyone so designated. More importantly, however, the powers and authority described in the letter ar limited to "matters relating to Federal Oil and Gas Leases," and nothing more. It is a statement describing a limited power of attorney, such as would normally be granted to an agent or attorney-in-fact. It is impossible to extend the limited authority described in the letter to embrace the general authority which appellant now asserts was invested in Milliard, i.e., "having general direction and control of corporation's affairs and who may do everything which corporation could do in transacti of its business," citing Black's Law Dictionary, and Continental Supply C v. Forrest E. Gilmore Co. of Texas, Tex. Civ. App., 55 S.W. 2d 622. Further, the letter not only failed to describe Milliard as either "gener manager" or as an officer, it did not even identify him as an employee. H might well have been an independent land man or lease broker under contra to perform the limited and specialized function which the corporation described to BLM.

The dissent finds that the regulations are "unclear" because they fa to establish whether a "general manager" may be considered a "corporate officer" within their ambit. We emphasize that this is not the issue. T regulations clearly provide that lease offers filed by agents and attorneys-in-fact must be supported by different submissions than those filed by corporate officers. In either case, however, it is the responsibility of the offeror to provide evidence to

show BLM either (1) "that the officer executing the lease is authorized t act on behalf of the corporation in such matters (43 CFR 3102.4-1), or (2 evidence of the authority of the attorney-in-fact or agent to sign the ar lease * * * on behalf of the offeror." (43 CFR 3102.6-1).

Any latent confusion in this case was not engendered by the language of the regulations, but by appellant's failure to meet its obligation to provide the requisite evidence to show who Milliard is and the full exter of his authority, if it is, in fact, greater than appellant had indicated Since appellant's submission declared that he only had certain limited powers, and did not identify him as an officer or an employee, or refer t him as "general manager," it was entirely proper for BLM to regard the amendment to the corporate qualifications as designating Milliard as the corporation's agent or attorney-in-fact. There certainly was nothing on file in BLM to suggest that he is a corporate officer. In filing the drawing entry cards for the subject leases, Milliard did sign his name ov the words "General Manager," but this did not avoid the problem because there was nothing on file in BLM to verify this, as required by regulatio Only if the corporation had listed him as "general manager" in the statement of qualifications prior to his acting in that capacity would it be necessary to examine the question of whether a general manager must or may be considered a corporate officer. After the drawing of simultaneous filed offers it is too late to "cure" any deficiencies in the form of an offer or the manner of its filing. Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976).

This case is virtually identical to the facts and result in United States Smelting, Refining and Mining Company, A-29201, A-29227 (Apr. 23, 1963), the only distinction being that in the earlier case the persons acting for the corporation signed the offers as "Division Landman," rathe than as "General Manager." On appeal the corporation contented that its Division Landman was in fact a corporate officer. The Department held th it was unnecessary to decide "who is an officer of a corporation?" Since even if the landman was found to be an officer, the corporation would sti not have complied with the applicable regulations by failing to identify him as such upon or prior to the filing of the offers.

Therefore, contrary to the statement in the dissenting opinion, "the essential question here" is not "whether Kenneth A. Milliard was authoriz to sign on behalf of Viking Resources Corporation and whether this was properly communicated along with the offer." We agree that he was authorized to sign for the corporation, and that this authorization has been properly communicated to BLM. The real issue is whether he was authorized to act in the capacity of an officer of the corporation, and i so whether that fact was "properly

communicated." As it was impossible for BLM to know from the submissions of the corporation that he was acting as a corporate officer, it is clear that fact was not "properly communicated" as the regulation requires.

[2] A noncompetitive oil and gas lease may be issued only to the first qualified applicant. 30 U.S.C. § 226(c) (1976). An offer signed b an attorney-in-fact or agent which is not acompanied by the statements required by regulation cannot be considered to have been submitted by a qualified applicant. Cotton Petroleum Corp., 38 IBLA 271 (1978); Energy Reserves Group, Inc., 36 IBLA 57 (1978); Southern Union Production Compar 22 IBLA 379 (1975); Union Oil Company of California, 71 I.D. 287 (1964); see Ballard E. Spencer Trust Inc. v. Morton, supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

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Edward W. Stuebing
Administrative Judge

I concur:

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Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE GOSS DISSENTING:

In cases such as this we are asked to decide, on the basis of a technicality, whether we should take from one drawee and give to a drawee whose offer was drawn later. The issue is the degree of importance of th technicality. While McKay v. Wahlenmaier, 226 F.2d 35 (D.C. Cir. 1955) indicated that a strict approach was appropriate, it is now clear under Brick v. Andrus, ___ F.2d ___ (D.C. Cir. 1980), and Winkler v. Andrus, 594 F.2d 775 (10th Cir. 1979), that no first drawn entry card offer shoul be rejected unless there is a significant violation of statute or regulation. Under 43 CFR 3102.4-1, the essential question here is whethe Kenneth A. Milliard was authorized to sign on behalf of Viking Resources Corporation and whether this was properly communicated along with the offer. Section 3102.4 provides in part:

§ 3102.4-1 Statements.

> If the offeror is a corporation, the offer must be accompanied by a statement showing (a) the State in which it is incorporated, (b) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters * * *. (Emphasis added.)

Kenneth A. Milliard was designated as General Manager of the corporation 1/ on each of the three drawing entry cards. Each of the thr cards also referred to Corporate Qualification File No. C-27785, under which was filed Milliard's authorization to act for the Corporation. The majority in effect rules that the authorization is inadequate because Milliard is not thereon designated specifically as a corporate officer. This requirement does not appear in the regulation. It is well settled that one should not be deprived of a preference right where the regulatio are unclear. E.g., Mary T. Arata, 4 IBLA 201, 78 I.D. 397 (1971).

I would distinguish United States Smelting Refining and Mining Company, supra. In that case there was no statement whatsoever filed

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1/ In Coen v. American Surety Co. of New York, 120 F.2d 393, 400 (8th Ci 1941), the Court discussed the broad authority of a corporate general manager:

"In the absence of special restrictions, the general manager of a corporation has authority, coextensive with the powers of the board of directors and of the corporation itself, to bind the corporation by usual and necessary acts in the ordinary course of its business." 19 C.J.S., Corporations, p. 469, § 1002.

by the corporation which empowered the Division Landman, either by name o title, to take any action on behalf of the corporation. Further, since that 1963 decision, the Court in Winkler, supra, has mandated that "trivi and inconsequential" defects 2/ should not be the concern of the Department. If there is a defect here, it surely is not as important as that in Kathleen A. Rubenstein, 46 IBLA 30 (1980), wherein the Department ruled that an offeror need not disclose his first name, despite the requirement on the front of the drawing entry card.

Joseph W. Goss
Administrative Judge

2/ In Winkler, supra, the face of the drawing entry card was stamped "J. A. Winkler Agency" "rather than Winkler, Joseph A. Accord, that the last name need not be placed first on the front of the card, Brick v. Andrus, supra.